



General Assembly

January Session, 2005

Committee Bill No. 732

LCO No. 3351

* _____SB00732BA_____031605_____*

Referred to Committee on Banks

Introduced by:
(BA)

AN ACT CONCERNING COMMERCIAL REVOLVING LOANS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 49-2 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

4 (c) Advancements may also be made by a mortgagee, or the
5 assignee of any mortgagee, under an open-end mortgage to the
6 original mortgagor, or to the assign or assigns of the original
7 mortgagor who assume the existing mortgage, or any of them, and any
8 such mortgage debt and future advances shall, from the time such
9 mortgage deed is recorded, without regard to whether the terms and
10 conditions upon which such advances will be made are contained in
11 the mortgage deed and, in the case of an open-end mortgage securing
12 a commercial revolving loan, a consumer revolving loan or a letter of
13 credit, without regard to whether the authorized amount of
14 indebtedness shall at that time or any time have been fully advanced,
15 be a part of the debt due such mortgagee and be secured by such
16 mortgage equally with the debts and obligations secured thereby at the
17 time of recording the mortgage deed and have the same priority over

18 the rights of others who may acquire any rights in, or liens upon, the
19 mortgaged real estate subsequent to the recording of such mortgage
20 deed, provided: (1) The heading of any such mortgage deed shall be
21 clearly entitled "Open-End Mortgage"; (2) the mortgage deed shall
22 contain specific provisions permitting such advancements and, if
23 applicable, shall specify that such advancements are made pursuant to
24 a commercial revolving loan agreement, a consumer revolving loan
25 agreement or a letter of credit; (3) the mortgage deed shall state the full
26 amount of the loan therein authorized; (4) the terms of repayment of
27 such advancements shall not extend the time of repayment beyond the
28 maturity of the original mortgage debt, provided this subdivision shall
29 not be applicable where such advancements are made or would be
30 made pursuant to a commercial revolving loan agreement, a consumer
31 revolving loan agreement or a letter of credit, and the mortgage deed
32 specifies that such advancements are repayable upon demand or by a
33 date which shall not be later than thirty years from the date of the
34 mortgage; (5) such advancements shall be secured or evidenced by a
35 note or notes signed by the original mortgagor or mortgagors or any
36 assign or assigns of the original mortgagor or mortgagors who assume
37 the existing mortgage, or any of them, but no note shall be required
38 with respect to any advancements made pursuant to a commercial
39 revolving loan agreement, a consumer revolving loan agreement or a
40 letter of credit as long as such advancements are recorded in the books
41 and records of the original mortgagee or its assignee; (6) the original
42 mortgage shall be executed and recorded after October 1, 1955; (7) the
43 original mortgagor or mortgagors, or any assign or assigns of the
44 original mortgagor or mortgagors who assume the existing mortgage,
45 or any of them, are hereby authorized to record a written notice
46 terminating the right to make such optional future advances secured
47 by such mortgage or limiting such advances to not more than the
48 amount actually advanced at the time of the recording of such notice,
49 provided a copy of such written notice shall also be sent by registered
50 or certified mail, postage prepaid and return receipt requested, to the
51 mortgagee, or a copy of such written notice shall be delivered to the

52 mortgagee by a proper officer or an indifferent person and a receipt for
53 the same received from the mortgagee, and such notice, unless a later
54 date is recorded or specified in the notice, shall be effective from the
55 time it is received by the mortgagee; (8) except that if any such
56 optional future advance or advances are made by the mortgagee, or
57 the assignee of any mortgagee, to the original mortgagor or
58 mortgagors, or any assign or assigns who assume the existing
59 mortgage, or any of them, after receipt of written notice of any
60 subsequent mortgage, lien, attachment, lis pendens, legal proceeding
61 or adjudication against such real property, then the amount of any
62 such advance, other than an advance made pursuant to a commercial
63 revolving loan agreement or a letter of credit, shall not be a priority as
64 against any such mortgage, lien, attachment, lis pendens or
65 adjudication of which such written notice was given; (9) any notice
66 given to the mortgagee under the terms of subdivision (8) of this
67 subsection shall be deemed valid and binding upon the original
68 mortgagee or any assignee of the original mortgagee, in the case of a
69 mortgagee other than a banking institution, on the next business day
70 following receipt by such mortgagee of such notice sent by registered
71 or certified mail, postage prepaid and return receipt requested or by
72 hand delivery with a signed receipt, and in the case of a mortgagee
73 which is a banking institution, on the next business day following
74 receipt at the main office of such banking institution of such notice sent
75 by registered or certified mail, postage prepaid and return receipt
76 requested or by hand delivery with a signed receipt. For the purposes
77 of this subsection: (A) "Banking institution" means a bank and trust
78 company, a national banking association having its main office in this
79 state, a savings bank, a federal savings bank having its main office in
80 this state, a savings and loan association, a federal savings and loan
81 association having its main office in this state, a credit union having
82 assets of two million dollars or more, or a federal credit union having
83 its main office in this state and having assets of two million dollars or
84 more; (B) "commercial revolving loan" means a loan to a foreign or
85 domestic corporation, limited liability company, partnership, sole

86 proprietorship, association or entity, or any combination thereof,
 87 whether or not organized for profit, [and engaged primarily in
 88 commercial, manufacturing or industrial pursuits,] which loan entails
 89 advances of all or part of the loan proceeds and repayments of all or
 90 part of the outstanding balance of the loan from time to time; and (C)
 91 "consumer revolving loan" means a loan to one or more individuals,
 92 the proceeds of which are intended primarily for personal, family or
 93 household purposes, which is secured by a mortgage on residential
 94 real property, and is made pursuant to an agreement between the
 95 mortgagor and mortgagee which (i) provides for advancements of all
 96 or part of the loan proceeds during a period of time which shall not
 97 exceed ten years from the date of such agreement and for repayments
 98 of the loan from time to time, (ii) provides for payments to be applied
 99 at least in part to the unpaid principal balance not later than ten years
 100 from the date of the loan, (iii) does not authorize access to the loan
 101 proceeds by a credit card or any similar instrument or device, whether
 102 known as a credit card, credit plate, or by any other name, issued with
 103 or without a fee by an issuer for the use of the cardholder in obtaining
 104 money, goods, services, or anything else of value on credit, and (iv)
 105 does not provide that such a revolving loan to more than one
 106 mortgagor will be immediately due and payable upon the death of
 107 fewer than all the mortgagors who signed the revolving loan
 108 agreement. Nothing in this subsection shall affect the validity or
 109 enforceability of any loan agreement which provides for future
 110 advancements by a lender to a borrower as between such parties or
 111 their heirs, successors or assigns, or shall affect the validity or
 112 enforceability of any mortgage securing any such loan that would be
 113 valid and enforceable without the provisions of this subsection.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>from passage</i>	49-2(c)
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BA *Joint Favorable*